

Title 13-C: MAINE BUSINESS CORPORATION ACT

Chapter 6: SHARES AND DISTRIBUTIONS

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Maine Revised Statutes
Title 13-C: MAINE BUSINESS CORPORATION ACT
Chapter 6: SHARES AND DISTRIBUTIONS

Subchapter 1: SHARES

§601. AUTHORIZED SHARES

1. Classes and number of shares authorized. A corporation's articles of incorporation must set forth any classes of shares and series of shares within a class, and the number of shares of each class and series that the corporation is authorized to issue. If more than one class or series of shares is authorized, the articles of incorporation must prescribe a distinguishing designation for each class or series and must describe, prior to the issuance of shares of a class or series, the terms, including the preferences, rights and limitations of that class or series. Except to the extent varied as permitted by this section, all shares of a class or series must have terms, including preferences, rights and limitations that are identical with those of other shares of the same class or series.

[2003, c. 344, Pt. B, §56 (AMD) .]

2. Voting rights authorized. A corporation's articles of incorporation must authorize one or more classes or series of shares that together have unlimited voting rights and one or more classes or series of shares, which may be the same class or classes or series as those with voting rights, that together are entitled to receive the net assets of the corporation upon dissolution.

[2003, c. 344, Pt. B, §56 (AMD) .]

3. Designations, preferences, limitations and relative rights. A corporation's articles of incorporation may authorize one or more classes or series of shares that:

A. Have special, conditional or limited voting rights or no right to vote, except to the extent otherwise provided by this Act; [2003, c. 344, Pt. B, §56 (AMD) .]

B. Are redeemable or convertible as specified in the articles of incorporation:

(1) At the option of the corporation, the shareholder or another person or upon the occurrence of a specified event;

(2) For cash, indebtedness, securities or other property; and

(3) At prices and in amounts specified, or determined in accordance with a formula; [2003, c. 344, Pt. B, §56 (AMD) .]

C. Entitle the holders to distributions calculated in any manner, including dividends that may be cumulative, noncumulative or partially cumulative; or [2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

D. Have preference over any other class or series of shares with respect to distributions, including distributions upon the dissolution of the corporation. [2003, c. 344, Pt. B, §56 (AMD) .]

The description of the designations, preferences, limitations, and relative rights of share classes in this subsection is not exhaustive.

[2003, c. 344, Pt. B, §56 (AMD) .]

4. Rules of construction for preferred shares. Unless otherwise provided by this Act or by a corporation's articles of incorporation or by resolution of the board of directors in the case of shares whose terms may be fixed as provided by section 602:

- A. Shares that are preferred as to dividends are deemed cumulative preferred shares; [2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]
- B. Shares that are preferred as to dividends are not entitled to participate in dividends beyond the amount of the stated dividend preference; [2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]
- C. Shares that are preferred as to dividends are preferred, on liquidation of the corporation, to the extent of the par or stated value of the shares, if any; [2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]
- D. Shares that are preferred as to liquidation are not entitled to participate in liquidation payments beyond the amount of the liquidation preference stated in the articles of incorporation or implied under paragraph C; [2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]
- E. If preferred shares cumulative as to dividends are entitled to a preferential payment on liquidation, the payment must also include the amount of dividends accrued but unpaid as of the date of liquidation; [2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]
- F. Shares that are preferred as to dividends or as to payments upon liquidation are not entitled to vote; and [2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]
- G. "Liquidation," "rights upon liquidation" and terms of like import shall refer to the formal dissolution of the corporation. Sale of all the corporate assets or participation of the corporation in a merger or consolidation is not deemed a liquidation. [2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]

This subsection does not apply to shares already issued or authorized on December 31, 1971.

[2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

5. Extrinsic facts. Terms of shares may be made dependent upon facts objectively ascertainable outside the articles of incorporation in accordance with section 121, subsection 10.

[2003, c. 344, Pt. B, §56 (NEW) .]

6. Variations among holders. Any of the terms of shares may vary among holders of the same class or series of shares as long as the variations are expressly set forth in the articles of incorporation.

[2003, c. 344, Pt. B, §56 (NEW) .]

SECTION HISTORY

2001, c. 640, §A2 (NEW). 2001, c. 640, §B7 (AFF). 2003, c. 344, §B56 (AMD).

§602. TERMS OF CLASS OR SERIES DETERMINED BY BOARD OF DIRECTORS

1. Determination by board of directors. If a corporation's articles of incorporation provide, the board of directors is authorized without shareholder approval to:

- A. Classify any unissued shares into one or more classes or into one or more series within a class; [2003, c. 344, Pt. B, §56 (NEW).]

B. Reclassify any unissued shares of any class into one or more classes or into one or more series within one or more classes; or [2003, c. 344, Pt. B, §56 (NEW).]

C. Reclassify any unissued shares of any series of any class into one or more classes or into one or more series within a class. [2003, c. 344, Pt. B, §56 (NEW).]

[2003, c. 344, Pt. B, §56 (AMD) .]

2. Series must have distinguishing designation.

[2003, c. 344, Pt. B, §56 (RP) .]

2-A. Terms fixed before issuance. If the board of directors acts pursuant to subsection 1, the board shall determine the terms including the preferences, rights and limitations to the same extent permitted under section 601, of:

A. Any class of shares before the issuance of any shares of that class; or [2003, c. 344, Pt. B, §56 (NEW) .]

B. Any series within a class before the issuance of any shares of that series. [2003, c. 344, Pt. B, §56 (NEW) .]

[2003, c. 344, Pt. B, §56 (NEW) .]

3. Identical terms.

[2003, c. 344, Pt. B, §56 (RP) .]

3-A. Filing articles of amendment. Before issuing any shares of a class or series created under this section, the corporation shall deliver to the Secretary of State for filing articles of amendment setting forth the terms authorized under subsection 1.

[2003, c. 344, Pt. B, §56 (NEW) .]

4. Filing articles of amendment.

[2003, c. 344, Pt. B, §56 (RP) .]

SECTION HISTORY

2001, c. 640, §A2 (NEW). 2001, c. 640, §B7 (AFF). 2003, c. 344, §B56 (AMD) .

§603. ISSUED AND OUTSTANDING SHARES

1. Issue number of shares authorized. A corporation may issue the number of shares of each class or series authorized by its articles of incorporation. Shares that are issued are outstanding shares until they are reacquired, redeemed, converted or cancelled.

[2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

2. Limitations on reacquisition, redemption or conversion. The reacquisition, redemption or conversion of outstanding shares is subject to the limitations of subsection 3 and to section 651.

[2003, c. 344, Pt. D, §12 (AMD) .]

3. Requirement. At all times that shares of the corporation are outstanding, there must be outstanding:

A. One share that has, or more shares that together have, unlimited voting rights; and [2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]

B. One share that is, or more shares that together are, entitled to receive the net assets of the corporation upon dissolution. [2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]

[2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

SECTION HISTORY

2001, c. 640, §A2 (NEW). 2001, c. 640, §B7 (AFF). 2003, c. 344, §D12 (AMD).

§604. FRACTIONAL SHARES

1. Authorization. A corporation may:

A. Issue fractions of a share or pay in money the value of fractions of a share; [2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]

B. Arrange for disposition of fractional shares by the shareholders; or [2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]

C. Issue scrip in registered or bearer form entitling the holder to receive a full share upon surrendering enough scrip to equal a full share. [2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]

[2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

2. Scrip. Each certificate representing scrip must be conspicuously labeled "scrip" and must contain the information required by section 626, subsection 2.

[2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

3. Rights. The holder of a fractional share is entitled to exercise the rights of a shareholder, including the right to vote, to receive dividends and to participate in the assets of the corporation upon liquidation. The holder of scrip is not entitled to any of these rights unless the scrip provides for them.

[2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

4. Conditions. The board of directors may authorize the issuance of scrip subject to any condition it considers desirable, including:

A. That the scrip will become void if not exchanged for full shares before a specified date; and [2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]

B. That the shares for which the scrip is exchangeable may be sold and the proceeds paid to the scripholders. [2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]

[2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

SECTION HISTORY

2001, c. 640, §A2 (NEW). 2001, c. 640, §B7 (AFF).

Subchapter 2: ISSUANCE OF SHARES

§621. SUBSCRIPTION FOR SHARES BEFORE INCORPORATION

1. Revocability. A subscription for shares entered into before incorporation is irrevocable for 6 months unless the subscription agreement provides a longer or shorter period or all the subscribers agree to revocation.

[2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

2. Payment terms. The board of directors of a corporation may determine the payment terms of a subscription for shares that was entered into before incorporation, unless the subscription agreement specifies the payment terms. A call for payment by the board of directors must be uniform as far as practicable as to all shares of the same class or series, unless the subscription agreement specifies otherwise.

[2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

3. Receipt of consideration. Shares issued pursuant to subscriptions entered into before incorporation are fully paid and nonassessable when the corporation receives the consideration specified in the subscription agreement.

[2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

4. Default; rescission. If a subscriber defaults in payment of money or property under a subscription agreement entered into before incorporation, the corporation may collect the amount owed as any other debt. Alternatively, unless the subscription agreement provides otherwise, the corporation may rescind the agreement and may sell the shares if the debt remains unpaid for more than 20 days after the corporation sends a written demand for payment to the subscriber.

[2011, c. 274, §15 (AMD) .]

5. Contract. A subscription agreement entered into after incorporation is a contract between the subscriber and the corporation subject to section 622.

[2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

SECTION HISTORY

2001, c. 640, §A2 (NEW). 2001, c. 640, §B7 (AFF). 2011, c. 274, §15 (AMD) .

§622. ISSUANCE OF SHARES

1. Reservation of powers. The powers granted in this section to the board of directors of a corporation may be reserved to the shareholders by the articles of incorporation.

[2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

2. Consideration. The board of directors of a corporation may authorize shares to be issued for consideration consisting of any tangible or intangible property or benefit to the corporation, including cash, promissory notes, services performed, contracts for services to be performed or other securities of the corporation.

[2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

3. Determination of adequate consideration. Before the corporation issues shares, its board of directors must determine that the consideration received or to be received for shares to be issued is adequate. The determination by the board of directors is conclusive insofar as the adequacy of consideration for the issuance of shares relates to whether the shares are validly issued, fully paid and nonassessable.

[2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

4. Fully paid; nonassessable. When the corporation receives the consideration for which its board of directors authorized the issuance of shares under subsection 3, those shares issued are fully paid and nonassessable.

[2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

5. Escrow. The corporation may place in escrow shares issued for a contract for future services or benefits or for a promissory note or may make other arrangements to restrict the transfer of the shares and may credit distributions in respect of the shares against their purchase price until the services are performed, the note is paid or the benefits received. If the services are not performed, the note is not paid or the benefits are not received, the shares escrowed or restricted and the distributions credited may be cancelled in whole or part.

[2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

SECTION HISTORY

2001, c. 640, §A2 (NEW). 2001, c. 640, §B7 (AFF).

§623. LIABILITY OF SHAREHOLDERS

1. Liability for paying consideration. A purchaser from a corporation of that corporation's own shares is not liable to the corporation or its creditors with respect to the shares except to pay the consideration for which the shares were authorized to be issued or specified in the subscription agreement.

[2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

2. Personal liability. Unless otherwise provided in a corporation's articles of incorporation, a shareholder of a corporation is not personally liable for the acts or debts of the corporation except that the shareholder may become personally liable by reason of the shareholder's acts or conduct.

[2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

SECTION HISTORY

2001, c. 640, §A2 (NEW). 2001, c. 640, §B7 (AFF).

§624. SHARE DIVIDENDS

1. Pro rata shares. Unless a corporation's articles of incorporation provide otherwise, shares may be issued pro rata and without consideration to the corporation's shareholders or to the shareholders of one or more classes or series of shares. An issuance of shares under this subsection is a share dividend.

[2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

2. Shares of different classes. Shares of one class or series may not be issued as a share dividend in respect of shares of another class or series unless:

A. The articles of incorporation so authorize; [2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

B. A majority of the votes entitled to be cast by the class or series to be issued approves the issue; or [2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]

C. There are no outstanding shares of the class or series to be issued. [2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]

[2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

3. Record date. If a corporation's board of directors does not fix the record date for determining shareholders entitled to a share dividend, the record date is the date the board of directors authorizes the share dividend.

[2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

SECTION HISTORY

2001, c. 640, §A2 (NEW). 2001, c. 640, §B7 (AFF).

§625. SHARE OPTIONS

1. Board authority to issue options. A corporation may issue rights, options or warrants for the purchase of shares or other securities of the corporation. The corporation's board of directors shall determine:

A. The terms upon which the rights, options or warrants are issued; and [2003, c. 344, Pt. B, §57 (NEW) .]

B. The terms including the consideration for which the shares or other securities are issued. [2003, c. 344, Pt. B, §57 (NEW) .]

The authorization by the board of directors for the corporation to issue these rights, options or warrants constitutes authorization of the issuance of the shares or other securities for which the rights, options or warrants are exercisable.

[2003, c. 344, Pt. B, §57 (NEW) .]

2. Limitations based on holdings. The terms and conditions of these rights, options or warrants, including those outstanding on the effective date of this section, may include, without limitation, restrictions or conditions that:

A. Preclude or limit the exercise, transfer or receipt of these rights, options or warrants by any person or persons owning or offering to acquire a specified number or percentage of the outstanding shares or other securities of the corporation or by any transferee of the person; or [2003, c. 344, Pt. B, §57 (NEW) .]

B. Invalidate or void these rights, options or warrants held by the person or the transferee. [2003, c. 344, Pt. B, §57 (NEW) .]

[2003, c. 344, Pt. B, §57 (NEW) .]

3. Authorized officers. The board of directors may authorize one or more officers to:

A. Designate the recipients of rights, options, warrants or other equity compensation awards that involve the issuance of shares; and [2011, c. 274, §16 (NEW) .]

B. Determine, within an amount and subject to any other limitations established by the board and, if applicable, the stockholders, the number of such rights, options, warrants or other equity compensation awards and the terms thereof to be received by the recipients, except that an officer or officers may not

use such authority to designate themselves or such other persons as the board of directors may specify as a recipient or recipients of such rights, options, warrants or other equity compensation awards. [2011, c. 274, §16 (NEW).]

[2011, c. 274, §16 (NEW) .]

SECTION HISTORY

2001, c. 640, §A2 (NEW). 2001, c. 640, §B7 (AFF). 2003, c. 344, §B57 (RPR). 2011, c. 274, §16 (AMD).

§626. FORM AND CONTENT OF CERTIFICATES

1. Certificate not required. Shares may but need not be represented by certificates. Unless this Act or another law expressly provides otherwise, whether the shares are represented by certificates or not does not affect the rights and obligations of shareholders.

[2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

2. Content of certificate. At a minimum each share certificate must state on its face:

A. The name of the issuing corporation and that the corporation is organized under the laws of this State; [2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]

B. The name of the person to whom issued; and [2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]

C. The number and class of shares and the designation of the series, if any, the certificate represents. [2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]

[2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

3. Classes. If the issuing corporation is authorized to issue different classes of shares or different series within a class, the designations, relative rights, preferences and limitations applicable to each class and the variations in rights, preferences and limitations determined for each series and the authority of its board of directors to determine variations for future series must be summarized on the front or back of each certificate. Alternatively, each certificate may state conspicuously on its front or back that the corporation will furnish the shareholder this information on request in writing and without charge.

[2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

4. Signatures. Each share certificate must be signed, either manually or in facsimile, by:

A. Two officers designated in the bylaws or by the board of directors; or [2015, c. 259, §5 (AMD) .]

B. The clerk and an officer designated in the bylaws or by the board of directors. [2015, c. 259, §5 (AMD) .]

C. [2015, c. 259, §5 (RP) .]

A share certificate may bear the corporate seal or its facsimile.

[2015, c. 259, §5 (AMD) .]

5. Signatory no longer holds office. If the person who signed a share certificate pursuant to subsection 4 no longer holds office when the certificate is issued, the certificate is nevertheless valid.

[2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

SECTION HISTORY

2001, c. 640, §A2 (NEW). 2001, c. 640, §B7 (AFF). 2015, c. 259, §5 (AMD).

§627. SHARES WITHOUT CERTIFICATES

1. Authorization. Unless the articles of incorporation or bylaws provide otherwise, the board of directors of a corporation may authorize the issue of some or all of the shares of any or all of its classes or series of shares without certificates. The authorization does not affect shares already represented by certificates until they are surrendered to the corporation.

[2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

2. Written statement. Within a reasonable time after the issue or transfer of shares without certificates, the corporation shall send the shareholder a written statement of the information required on certificates by section 626, subsections 2 and 3 and, if applicable, section 628.

[2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

SECTION HISTORY

2001, c. 640, §A2 (NEW). 2001, c. 640, §B7 (AFF).

§628. RESTRICTION ON TRANSFER OF SHARES AND OTHER SECURITIES

1. Share includes. For purposes of this section, "share" includes a security convertible into or carrying a right to subscribe for or acquire shares.

[2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

2. Imposition of restrictions. A corporation's articles of incorporation or bylaws, an agreement among shareholders or an agreement between shareholders and the corporation may impose restrictions on the transfer or registration of transfer of shares of the corporation. A restriction does not affect shares issued before the restriction was adopted unless the holders of the shares are parties to the restriction agreement or voted in favor of the restriction.

[2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

3. Existence of restriction must be made known. A restriction on the transfer or registration of transfer of shares is valid and enforceable against the holder or a transferee of the holder if the restriction is authorized by this section and its existence is noted conspicuously on the front or back of the certificate or is contained in the information statement required by section 627, subsection 2. Unless so noted, a restriction is not enforceable against a person who has no knowledge of the restriction.

[2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

4. Purpose of restriction. A restriction on the transfer or registration of transfer of shares is authorized:

A. To maintain the corporation's status when it is dependent on the number or identity of its shareholders; [2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

B. To preserve exemptions under federal or state securities law; or [2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]

C. For any other reasonable purpose. [2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]

[2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

5. Authorized restrictions. A restriction on the transfer or registration of transfer of shares may:

A. Obligate the shareholder first to offer the corporation or other persons, separately, consecutively or simultaneously, an opportunity to acquire the restricted shares; [2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]

B. Obligate the corporation or other persons, separately, consecutively or simultaneously, to acquire the restricted shares; [2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]

C. Require the corporation, the holders of any class of its shares or another person to approve the transfer of the restricted shares if the requirement is not manifestly unreasonable; or [2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]

D. Prohibit the transfer of the restricted shares to designated persons or classes of persons if the prohibition is not manifestly unreasonable. [2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]

[2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

SECTION HISTORY

2001, c. 640, §A2 (NEW). 2001, c. 640, §B7 (AFF).

§629. EXPENSE OF ISSUE

A corporation may pay the expenses of selling or underwriting its shares and of organizing or reorganizing the corporation from the consideration received for shares. [2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]

SECTION HISTORY

2001, c. 640, §A2 (NEW). 2001, c. 640, §B7 (AFF).

Subchapter 3: SUBSEQUENT ACQUISITION OF SHARES BY SHAREHOLDERS AND CORPORATION

§641. SHAREHOLDERS' PREEMPTIVE RIGHTS

1. Share includes. For purposes of this section, "share" includes a security convertible into or carrying a right to subscribe for or acquire shares.

[2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

2. No preemptive right absent statement in articles of incorporation. The shareholders of a corporation do not have a preemptive right to acquire the corporation's unissued shares except to the extent the articles of incorporation provide.

[2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

3. Statement. A statement included in the articles of incorporation that "the corporation elects to have preemptive rights," or containing words of similar import, means that the principles set out in paragraphs A to F apply except to the extent the articles of incorporation expressly provide otherwise.

A. The shareholders of the corporation have a preemptive right, granted on uniform terms and conditions prescribed by the board of directors to provide a fair and reasonable opportunity to exercise the right, to acquire proportional amounts of the corporation's unissued shares upon the decision of the board of directors to issue them. [2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]

B. A shareholder may waive that shareholder's preemptive right. A waiver evidenced by a writing is irrevocable even though it is not supported by consideration. [2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]

C. There is no preemptive right with respect to:

- (1) Shares issued as compensation to directors, officers, agents or employees of the corporation, its subsidiaries or affiliates;
- (2) Shares issued to satisfy conversion or option rights created to provide compensation to directors, officers, agents or employees of the corporation, its subsidiaries or affiliates;
- (3) Shares authorized in articles of incorporation that are issued within 6 months from the effective date of incorporation; or
- (4) Shares sold otherwise than for money. [2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]

D. Holders of shares of any class without general voting rights but with preferential rights to distributions or assets have no preemptive rights with respect to shares of any class. [2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]

E. Holders of shares of any class with general voting rights but without preferential rights to distributions or assets have no preemptive rights with respect to shares of any class with preferential rights to distributions or assets unless the shares with preferential rights are convertible into or carry a right to subscribe for or acquire shares without preferential rights. [2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]

F. Shares subject to preemptive rights that are not acquired by shareholders may be issued to any person for a period of one year after being offered to shareholders at a consideration set by the corporation's board of directors that is not lower than the consideration set for the exercise of preemptive rights. An offer at a lower consideration or after the expiration of one year is subject to the shareholders' preemptive rights. [2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]

[2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

4. Preemptive rights. Nothing in this section detracts from or takes away the preemptive rights that pertained to any shares of a corporation that were issued and outstanding on June 30, 2003. The rights may be altered by an amendment adopted pursuant to chapter 10.

[2003, c. 344, Pt. B, §58 (NEW) .]

SECTION HISTORY

2001, c. 640, §A2 (NEW). 2001, c. 640, §B7 (AFF). 2003, c. 344, §B58 (AMD).

§642. CORPORATION'S ACQUISITION OF ITS OWN SHARES

1. Acquisition. A corporation may acquire its own shares. Shares so acquired constitute authorized but unissued shares.

[2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

2. Prohibition on reissuance. If a corporation's articles of incorporation prohibit the reissue of the acquired shares, the number of authorized shares is reduced by the number of shares acquired.

[2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

SECTION HISTORY

2001, c. 640, §A2 (NEW). 2001, c. 640, §B7 (AFF).

Subchapter 4: DISTRIBUTIONS

§651. DISTRIBUTIONS TO SHAREHOLDERS

1. Distributions. A board of directors of a corporation may authorize and the corporation may make distributions to its shareholders subject to restriction by the articles of incorporation and the limitation in subsection 3.

[2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

2. Record date. If the board of directors of a corporation does not fix the record date for determining shareholders entitled to a distribution, other than one involving a purchase, redemption or other acquisition of the corporation's shares, then the record date is the date the board of directors authorizes the distribution.

[2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

3. Distribution prohibited. A distribution may not be made if, after giving the distribution effect:

A. The corporation would not be able to pay its debts as they become due in the usual course of business; or [2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

B. The corporation's total assets would be less than the sum of its total liabilities plus, unless the articles of incorporation permit otherwise, the amount that would be needed, if the corporation were to be dissolved at the time of the distribution, to satisfy the preferential rights upon dissolution of shareholders whose preferential rights are superior to those receiving the distribution. [2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

[2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

4. Basis for determination. The board of directors of a corporation may base a determination that a distribution is not prohibited under subsection 3 either on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances or on a fair valuation or other method that is reasonable in the circumstances.

[2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

5. Effect measured. Except as provided in subsection 7, the effect of a distribution under subsection 3 is measured:

A. In the case of distribution by purchase, redemption or other acquisition of the corporation's shares, as of the earlier of the date money or other property is transferred or debt incurred by the corporation or the date the shareholder ceases to be a shareholder with respect to the acquired shares; [2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]

B. In the case of any other distribution of indebtedness, as of the date the indebtedness is distributed; and [2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]

C. In all other cases, as of the date the distribution is authorized if the payment occurs within 120 days after the date of authorization or the date the payment is made if it occurs more than 120 days after the date of authorization. [2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]

[2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

6. Indebtedness to shareholder. A corporation's indebtedness to a shareholder incurred by reason of a distribution made in accordance with this section is at parity with the corporation's indebtedness to its general, unsecured creditors except to the extent subordinated by agreement.

[2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

7. Indebtedness issued as a distribution. Indebtedness of a corporation, including indebtedness issued as a distribution, is not considered a liability for purposes of determinations under subsection 3 if the terms of the indebtedness provide that payment of principal and interest are made only if and to the extent that payment of a distribution to shareholders could then be made under this section. If indebtedness on those terms is issued as a distribution, each payment of principal or interest is treated as a distribution, the effect of which is measured on the date the payment is actually made.

[2003, c. 631, §16 (AMD) .]

8. Application. This section does not apply to distributions in liquidation under chapter 14.

[2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

SECTION HISTORY

2001, c. 640, §A2 (NEW). 2001, c. 640, §B7 (AFF). 2003, c. 631, §16 (AMD) .

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